

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8757 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KAUSHALYABEN WIFE OF RAJU @ RAJKUMAR RAMPAL SHAH

Versus

STATE OF GUJARAT

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Appearance:

MR PS CHAMPANERI for Petitioner  
APP Mr.U.R.Bhatt for Respondent No. 1  
Mr.H.C.Patel appears on behalf of Union of India  
NOTICE UNSERVED for Respondent No. 4

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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 11/03/98

ORAL JUDGEMENT

By this application under article 226 of the Constitution of India, the petitioner calls in question the legality and validity of the order dated 15th July 1997, passed by the District Magistrate, Ahmedabad,

invoking his powers under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short 'the Act'), pursuant to which the petitioner has been arrested and at present he is under detention.

2. The District Magistrate, Ahmedabad had the information that Raju alias Rakumar Rampal Shah, the husband of the petitioner was dealing in gas cylinders illegally and therefore the Police Department was keeping a watch over his activities. On 24.4.97 near Kalang Mahadev Temple at Paldi Sarkhej Road after receipt of the information when a matador no.GRJ-2050 and a Maruti No. GBY 1630 were intercepted, about 115 gas cylinders from the matador and 16 cylinders from the Maruti van were found. In the Maruti Van, Raju alias Rajkumar was sitting while in the matador Lakhabhai Khodabhai Bharvad, Dhudabhai Kanabhai Bharvad and Madanlal Rathod were sitting. Madanlal Rathod had escaped immediately after both the vehicles were intercepted. On being questioned the raiding party was informed that they did not have any pass or permit. The raiding party found that Raju alias Rajkumar had committed the offence punishable under Sec.3-7 of the Essential Commodities Act. The raiding party therefore seized 131 gas cylinders. On further inquiry it was found that numbers of such gas cylinders were stored in a room situated in a field called Ramvadi within the local limits of Miroli from where also 46 gas cylinders were found. After necessary investigation in the matter the Police Officer could note that necessary records were not maintained and illegally and unauthorisedly Raju alias Rajkumar was dealing in gas cylinders. The gas cylinders were defective and were not safe to be used. The use thereof was dangerous to the human life. As they were all defective, possibility of blast at any time could not be ruled out. To prevent poignant scene in future, therefore the complaint against him was registered. It was also found that for profiteering motive and encouraging the black economy the petitioner was from different place getting the defective cylinders and was then supplying it to the people. He used to get the defective gas cylinders from Delhi under bogus bill and have the same at Bombay for selling it to different persons at a lesser rate than the market rate and thereby he was profiteering by putting people to risk of their lives. The statements of Praveenbhai Kantibhai, Dineshbhai Kantilal, Maheshbhai Rambhai and Madanlal Harish Patel were recorded. It was found that Rajubhai alias Rajkumar was having a widespread net-work and had supplied the defective cylinders to different persons. He thereby committed different offence with the result

the Police Agency inquired into the offence , prepared necessary files and sent it to the District Magistrate for passing the order of detention. The District Magistrate after applying the mind found that to curb the black economy order of detention under the Act was the only way out, as action under general law were going to be unproductive. He then passed impugned order pursuant to which Raju alias Rajkumar is arrested and at present he is under detention.

3. Challenging the impugned order the learned advocate representing the petitioner has contended that the order is passed without application of mind because the petitioner after being arrested in connection with the offence under the Essential Commodities Act was released on bail by Special Judge of the Special Court and the bail papers, as well as the bail order passed by the Special Judge were not considered while passing the impugned order. The satisfaction was therefore vitiated as it was without application of mind. The impugned order is therefore bad in law and is liable to be set aside. Further, the bail papers and the copy of the appeal order passed by the Special Judge are not supplied to the detenu, with the result detenu's right to make effective representation is jeopardized. On these two grounds therefore the order of detention being bad in law is required to be quashed and set aside, is the submission.

4. Mr.Divetia, Learned APP representing the State of Gujarat drew my attention to the affidavits of Mr.V.S.Ghadhvi, the Detaining Authority, and submitted that the bail papers were not required to be considered, and when the bail papers and order passed in bail application by the Special Judge were not considered, it was not at all necessary to supply the copies thereof to the detenu. In fact they were not made the base of the order, but independent of the same the papers placed before the District Magistrate, the order was passed. Hence the order cannot be held bad on the ground of non application of mind and lack of satisfaction.

5. The law on the point is made clearly by the Supreme court in Anant Sakharam this Court in Anantsantram Raut V/s. State of Maharashtra, AIR 1987, SC 137. Considering the Section 3(2) of the National Security Act it is laid down that the detaining Authority has to consider the papers relating to the incidents in respect of which criminal cases are pending and the detenu is required to be informed of the fact of the application he has filed for bail and the order passed

therein. If the order of detention is silent about these facts, it will amount to total absence of application of mind on the part of the Detaining Authority. Consequently the detention order will be void.

6. Following the same decision this Court in *Salamkhan Bachchekhan Pathan V/s. Commissioner of Police, Baroda* 29 (1):1988(1) GLR 450 has likewise made it clear that if the order of detention is made without application of mind the same is liable to be quashed. If the detenu is arrested and thereafter released on bail by the competent court the said facts are required to be taken into consideration and brought to the notice of the detenu and if not considered the same satisfaction arrived at by detaining authority would be vitiated for non-application of mind and the order will be liable to be quashed. Whether the bail papers and the order passed regarding the appeal can be said to be the material documents required to be considered and furnished to the detenu was the question raised before the Supreme Court in the case of *M.Ahamedkutty Vs. Union of India* (1990) 2 SCC 1, wherein it is held that bail application filed on behalf of the detenu and bail order constitute vital materials. Non-consideration thereof by the detaining authority or non-supply of the copies thereof to detenu would be violative of Art 22(5) and continued detention will be illegal. It is also in the case of *Dharamdas Shamlal Vs. The Police Commissioner*, AIR 1989 SC 1282 about the subjective satisfaction of the detaining authority, it is held that if the material fact of acquittal of defence in two of the cases mentioned in table appended to the grounds are not placed before the detaining authority, the satisfaction is vitiated because such materials will have bearing on the issue and will help the detaining authority to have satisfaction one way or the other.

7. What can be adduced from all these facts is that if the material papers are not considered by the detaining authority for having subjective satisfaction before passing the order the same would be vitiated as there would be non-application of mind, with the result the order passed must be held to be illegal. The bail application and order qua bail passed by the competent court being the material documents are required to be considered by the Authority because they would have bearing on the issue and would influence the mind of the detaining authority for having subjective satisfaction on one way or the other. If therefore the bail papers and orders passed thereof are not considered, the subjective satisfaction is vitiated and the detention order passed

will be illegal. In this case from the affidavit of Mr.V.S.Ghadvi, Detaining authority it clearly appears that he did not consider the bail application filed by the detenu before the Special Judge and the bail order passed by the Special Judge thinking that they were not relevant documents for his purpose. Though they were relevant, when not considered his subjective satisfaction is vitiated, because non-consideration of such documents amounts to non-application of mind. On this ground, the order of detention being bad in law is required to be quashed and set aside.

8. On one more ground also the order cannot be maintained. The bail application and the order passed regarding the vital documents, copies thereof were required to be supplied to the detenu so that the detenu could make effective representation if he so desired. If his right to make representation is jeopardised by withholding certain copies of the documents the order cannot be maintained. In this case the copies of the bail application as well as the bail order passed by the Special Judge are not given to the detenu which is evident from the affidavit filed by Mr.V.S.Ghadvi, the detaining authority. When that is so the right to make effective representation of the detenu is jeopardised. Consequently, the order of detention is required to be quashed and set aside.

9. For the aforesad reasons, the application is allowed. The order of detention dated 15.7.97 is hereby quashed and set aside and detenu Raju alias Rajkumar Rampal Shah is ordered to be set at liberty forthwith if not required in any other case. Rule is accordingly made absolute.

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